

RCE #48 1327

PTO/SB/30 (08-00)  
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# REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL

Subsection (b) of 35 U.S.C. § 132, effective on May 29, 2000,  
provides for continued examination of an utility or plant application  
filed on or after June 8, 1995.  
See The American Inventors Protection Act of 1999 (AIPA).

Application Number	470-961125
Filing Date	December 17, 1996
First Named Inventor	Stephen M. Anderton et al.
Group Art Unit	1644
Examiner Name	Patrick J. Nolan
Attorney Docket Number	470-961125

This is a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 of the above-identified application.

**NOTE:** 37 C.F.R. § 1.114 is effective on May 29, 2000. If the above-identified application was filed prior to May 29, 2000, applicant may wish to consider filing a continued prosecution application (CPA) under 37 C.F.R. § 1.53 (d) (PTO/SB/29) instead of a RCE to be eligible for the patent term adjustment provisions of the AIPA. See Changes to Application Examination and Provisional Application Practice, Final Rule, 65 Fed. Reg. 50092 (Aug. 16, 2000); Interim Rule, 65 Fed. Reg. 14865 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office 47 (Apr. 11, 2000), which established RCE practice.

## 1. Submission required under 37 C.F.R. § 1.114

- a. ☒ Previously submitted
- i. ☒ Consider the amendment(s)/reply under 37 C.F.R. § 1.116 previously filed on December 21, 2000  
(Any unentered amendment(s) referred to above will be entered).
- ii. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on \_\_\_\_\_
- iii. ☐ Other \_\_\_\_\_
- b. ☐ Enclosed
- i. ☐ Amendment/Reply
- ii. ☐ Affidavit(s)/Declaration(s)
- iii. ☐ Information Disclosure Statement (IDS)
- iv. ☒ Other Request for Reconsideration of Holding of Abandonment

## 2. Miscellaneous

- a. ☐ Suspension of action on the above-identified application is requested under 37 C.F.R. § 1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 C.F.R. § 1.17(i) required)
- b. ☒ Other Petition for Extension of Time and Notice of Appeal

## 3. Fees

The RCE fee under 37 C.F.R. § 1.17(e) is required by 37 C.F.R. § 1.114 when the RCE is filed.

- a. ☒ The Director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No. 23-0650
- i. ☒ RCE fee required under 37 C.F.R. § 1.17(e)
- ii. ☒ Extension of time fee (37 C.F.R. §§ 1.136 and 1.17)
- iii. ☐ Other \_\_\_\_\_
- b. ☒ Check in the amount of \$710, 310 & 1,890 enclosed
- c. ☐ Payment by credit card (Form PTO-2038 enclosed)

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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type)	Barbara E. Johnson	Registration No. (Attorney/Agent)	31,198
Signature	<i>Barbara E. Johnson</i>	Date	September 17, 2001

## CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner For Patents, Box RCE, Washington, DC 20231, or facsimile transmitted to the U.S. Patent and Trademark Office on:

Name (Print/Type)	Kimberly N. Welday	Date	September 17, 2001
Signature	<i>Kimberly N. Welday</i>		

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**PATENT APPLICATION**  
Serial No. 08/716,169  
Atty. Docket No. 470-961125

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Group Art Unit 1644 :  
In re application of :  
**Stephen M. ANDERTON et al.** : **PEPTIDE FRAGMENTS OF MICROBIAL**  
: **STRESS PROTEINS AND**  
Serial No. 08/716,169 : **PHARMACEUTICAL COMPOSITION**  
: **MADE THEREOF FOR THE TREATMENT**  
Filed December 17, 1996 : **AND PREVENTION OF INFLAMMATORY**  
: **DISEASES**  
Examiner - Patrick J. Nolan :

Pittsburgh, Pennsylvania  
September 17, 2001

**REQUEST FOR RECONSIDERATION OF HOLDING OF ABANDONMENT**

**BOX DAC**  
Commissioner for Patents  
Washington, D.C. 20231

Sir:

In response to the Communication dated March 16, 2001, Applicants hereby submit the accompanying Petition for Extension of Time, Request for Continued Examination, and the following remarks.

**REMARKS**

A timely response to the Communication dated March 16, 2001 is enclosed.  
This response substantively comprises the filing of a Request for Continued Examination

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\_\_\_\_\_  
Barbara E. Johnson, Registration No. 31,198  
(Name of Registered Representative)

\_\_\_\_\_  
Signature Date 09/17/2001

(RCE), together with the following remarks. Entry of the unentered Amendment previously filed on December 21, 2000, and examination and allowance of claims 24-30 are requested.

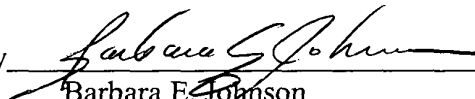
In the Communication dated March 16, 2001, the Examiner maintained that the Amendment filed on December 21, 2000 cancelled all claims drawn to an elected invention, presented only claims drawn to a nonelected invention, and was nonresponsive. The Examiner asserted that the remaining claims are not readable on the elected invention because they are drawn to a method while the originally elected invention resided in a product. This Communication also indicated, erroneously as described below, that this application has gone abandoned.

Applicants have not received a Notice of Abandonment in this application, and believe that the present application has not gone abandoned. Applicants presented method claims in the December 21, 2000 Amendment in the belief that they better characterized the invention. Claim 24 is drawn to a method comprising the administration of the compound previously claimed in claim 23. All other newly presented claims are dependent from claim 24. It is therefore believed that examination of claims drawn to this method will not pose an undue or additional burden to consider. Applicants presented the amended claims in the belief that, according to MPEP 820, such a change does not constitute a shift and is not subject to the restriction requirement. Assuming, *arguendo*, that the change *is* a shift in invention, it is stated in MPEP 819.01 that such a shift is not precluded, and is permitted where the shift results in no additional work or expense, and particularly where the shift reduces work as by simplifying the issues.

Applicants therefore believe that this filing is responsive to the March 16, 2001 Communication and note that the response period for the March 16, 2001 Communication has not expired. Applicants request that the Examiner reconsider the holding of abandonment and continue prosecution of the method claims as currently presented.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON  
ORKIN & HANSON, P.C.

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